

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

SYLVIA MARIE ROONEY,

Plaintiff,

v.

Case No. 18-cv-2030-pp

NANCY BERRYHILL,

Defendant.

**ORDER GRANTING AMENDED MOTION FOR LEAVE TO PROCEED
WITHOUT PREPAYMENT OF THE FILING FEE (DKT. NO. 6)**

The plaintiff has filed a complaint seeking judicial review of a final administrative decision denying her claim for disability insurance benefits under the Social Security Act. Dkt. No. 1. She also filed a motion for leave to proceed without prepaying the filing fee. Dkt. No. 3. On January 11, 2019, the court ordered that by the end of the day on February 1, 2019, the plaintiff had to file an amended motion for leave to proceed without prepaying the filing fee, because her original motion had not provided enough information about how she was living and whether she had the ability to pay the filing fee. Dkt. No. 5. The plaintiff timely filed that amended motion. Dkt. No. 6.

To allow the plaintiff to proceed without paying the filing fee, the court first must decide whether she can pay the fee; if not, it must determine whether the lawsuit is frivolous. 28 U.S.C. §§1915(a) and 1915(e)(2)(B)(i).

Based on the facts in the plaintiff's amended application, the court concludes that she does not have the ability to pay the filing fee. Most of the plaintiff's information did not change from the first application to the amended one. She still alleges that she has no income, she has no expenses, she does not own a home or a car, she has no cash on hand or in a checking or savings account, and she owns no other property of value. Dkt. No. 6 at 1-4. Section V, the "Other Circumstances" portion of the amended complaint, however, includes new information. The plaintiff states, "I am separated from my husband and he does not provide me any support. I do not have any monthly bills because I live part time with my adult son and part time with my dear friend. They do not give me any money. They only provide me with a place to live and food to eat so that I am not living on the street or in a shelter." Id. at 4. The plaintiff has demonstrated that she cannot pay the \$350 filing fee and \$50 administrative fee.

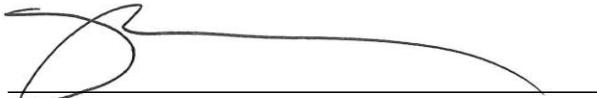
The next step is to determine whether the case is frivolous. A case is frivolous if there is no arguable basis for relief either in law or in fact. Denton v. Hernandez, 504 U.S. 25, 31 (1992) (quoting Nietzke v. Williams, 490 U.S. 319, 325 (1989); Casteel v. Pieschek, 3 Fed. 1050, 1056 (7th Cir. 1993)). A person may obtain district court review of a final decision of the Commissioner of Social Security. 42 U.S.C. §405(g). The district court must uphold the Commissioner's final decision if the Commissioner used the correct legal standards and the decision is supported by substantial evidence. See Roddy v. Astrue, 705 F.3d 631, 636 (7th Cir. 2013).

The plaintiff's complaint states that she was disabled during the time period included in this case, and that she believes the Commissioner's unfavorable conclusions and findings of fact are not supported by substantial evidence and/or are contrary to law and regulation. Dkt. No. 1 at 2. At this early stage in the case, and based on the information in the plaintiff's complaint, the court concludes that there may be a basis in law or in fact for the plaintiff's appeal of the Commissioner's decision, and that the appeal may have merit, as defined by 28 U.S.C. §1915(e)(2)(B)(i).

The court **GRANTS** the plaintiff's amended motion for leave to proceed without paying the filing fee. Dkt. No. 6.

Dated in Milwaukee, Wisconsin this 29th day of January, 2019.

BY THE COURT:



HON. PAMELA PEPPER
United States District Judge